



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION
Case #: FOO - 175187

PRELIMINARY RECITALS

On June 25, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Wood County Human Services - WI Rapids regarding FoodShare benefits (FS). The hearing was held on July 13, 2016, by telephone.

The issue for determination is whether the county agency correctly reduced the petitioner's FoodShare allotment after determining that she does not pay her own utilities.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]

Wood County Human Services - WI Rapids
220 Third Avenue South
Suite 4
Wisconsin Rapids, WI 54495

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Ashland County.

2. The department notified the petitioner on May 20, 2016, that her FoodShare allotment would fall from \$129 to \$16 on July 1, 2016.
3. The petitioner receives \$836.78 a month in unearned income.
4. The petitioner's rent is \$350 per month. She does not pay any of her utilities other than her telephone. She does not receive Energy Assistance.

DISCUSSION

The size of a FoodShare allotment depends upon household size and net income. Net income is determined after subtracting from gross income those deductions—and only those deductions—found in 7 CFR § 273.9(d). The department reduced the petitioner's FoodShare allotment from \$129 to \$16 per month after determining that it had incorrectly allowed her too large of a shelter deduction because it incorrectly assumed that she was paying for her own heat.

The shelter deduction depends upon a fairly complex formula. Before determining that deduction, it is necessary to determine any other deductions she is entitled to. Her monthly gross income is \$836.78, all unearned. She is entitled to the \$155 standard deduction allowed for households with up to three members. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). She is not entitled to the earned income deduction equal to 20% of one's earned income because her income consist entirely of social security, which is considered unearned. *See* 7 CFR § 273.9(d)(2). Nor is she entitled to an excess medical expense deduction for unreimbursed monthly medical expenses that exceed \$35; her unreimbursed medical expenses are \$23.60 per month. 7 CFR §273.9(d)(3); *FoodShare Wisconsin Handbook*, § 4.6.4.1.

The shelter deduction equals the amount that housing costs, including a standard utility allowance exceed 50% of the net income remaining after all other deductions are subtracted from gross income. (Because there is a standard utility allowance, actual utility costs are not considered.) *FoodShare Wisconsin Handbook*. § 4.6.7; 7 C.F.R. § 273.9(d)(6)(ii); *FoodShare Wisconsin Handbook*, § 8.1.3. She has been receiving the Heat Utility Standard, which is available to persons who pay their own heat or receive at least \$20 per month in Energy Assistance payments. *FoodShare Wisconsin Handbook*, § 4.6.7.3. This should have ended last July because the petitioner does not fall into either of these categories. Instead, because of an agency oversight, she continued to receive it. She concedes that she does not pay for heat or receive Energy Assistance, but contends she should continue to receive the allowance because she received it in the past. Although I sympathize with her, there is no grandfather clause that allows someone to continue receiving benefits she is not entitled to.

What the petitioner is entitled to is the Phone Utility Allowance. This allowance is \$30 rather than the \$458 allowed for the Heat Utility Standard. *FoodShare Wisconsin Handbook*, § 8.1.3. Her rent is \$350 per month. Adding this to the phone allowance brings her shelter costs to \$380 per month. Deducting the \$155 standard allowance from her \$836.78 gross income leaves her with \$681.78. Half of this is \$340.89. Her \$380 in shelter costs exceed this amount by \$39.11, which is her shelter deduction. If she still were allowed the heat allowance, that deduction would be \$467.11. Subtracting the two deductions she is allowed—the \$39.11 shelter deduction and the \$155 standard deduction—from her \$836.78 gross income, leaves her with \$642.67 in countable net income. The FoodShare allotment for a one-person household, the size of her household, with this income is \$16. *FoodShare Wisconsin Handbook*, § 8.1.2. The difference between this amount and the \$129 she had been receiving is due entirely to her not receiving the Heat Standard Utility Allowance.

CONCLUSIONS OF LAW

The department correctly reduced the petitioner's FoodShare allotment because she does not pay any utilities other than her telephone.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

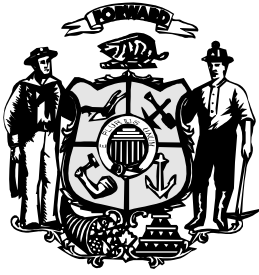
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of July, 2016

\s _____
Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 19, 2016.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability